

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MATT BURCAR AND  
JOHN BUREK,

Plaintiffs,

Case No. 22-cv-12054  
Hon. Matthew F. Leitman

v.

DECORATIVE PANELS  
INTERNATIONAL, INC.,

Defendant.

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**ORDER TERMINATING DEFENDANT’S MOTION TO DISMISS  
WITHOUT PREJUDICE AS MOOT (ECF No. 10)**

On August 31, 2022, Plaintiffs Matt Burcar and John Burek filed this putative class action against Defendant Decorative Panels International, Inc. (“DPI”). (*See* Compl., ECF No. 1.) Plaintiffs allege, among other things, that DPI has “released, and on frequent separate, distinct, and additional occasions continues to release, noxious odors onto Plaintiffs’ property, which has caused property damage by private nuisance and negligence.” (*Id.* at ¶2, PageID.1.) DPI thereafter filed a motion to dismiss Plaintiffs’ claims. (*See* Mot. to Dismiss, ECF No. 10.)

On November 22, 2022, without expressing any view on the merits of the motion to dismiss, the Court entered an order granting Plaintiffs leave to file a First Amended Complaint in order to remedy the alleged deficiencies in their claims

identified by DPI in its motion to dismiss. (*See* Order, ECF No. 13.) The Court informed the parties that if Plaintiffs provided notice that they intended to file a First Amended Complaint, the Court would terminate DPI's motion to dismiss without prejudice. (*See id.*)

On December 9, 2022, Plaintiffs filed a notice with the Court in which they indicated that they will be filing a First Amended Complaint. (*See* Notice, ECF No. 14.) Accordingly, because Plaintiffs will be filing a First Amended Complaint, the Court **TERMINATES** DPI's motion to dismiss (ECF No. 10) **WITHOUT PREJUDICE AS MOOT**. DPI may re-file a motion to dismiss directed at the First Amended Complaint if it believes that such a motion is appropriate after reviewing that pleading.

**IT IS SO ORDERED.**

Dated: December 21, 2022

s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 21, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan  
Case Manager  
(313) 234-5126